

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : BKCY NO. 22-10321-amc
Nathan J. Weaver :
Debtor : Chapter 13

Nathan J. Weaver :
Plaintiff : ADVERSARY NO. 22-
vs. :
First Franklin Mortgage Loan :
Trust, Mortgage Loan Asset- :
Backed Certificates, Series :
2007-FFC, U.S. Bank NA as :
Trustee, Successor in in interest :
to Bank of America NA, as :
Trustee, Successor by merger to :
LaSalle Bank NA, as Trustee :
Defendant :

**PLAINTIFFS' COMPLAINT TO
DETERMINE SECURED STATUS PURSUANT TO 11 U.S.C. §506**

Plaintiff, Nathan J. Weaver, by and through his counsel, Jeffrey C. McCullough, Esquire, bring this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001 to determine the validity, priority and extent of a lien in property and declaring such lien void pursuant to 11 U.S.C. §506, and in support thereof, state the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334(b) and 28 U.S.C. §157(a).
2. This is a Court proceeding as defined by 28 U.S.C. §157(b)(2)(K).
3. Venue of this adversary proceeding is properly in this Court pursuant to 28 U.S.C. §1409(a).

THE PARTIES

4. Plaintiff is Nathan J. Weaver, an individual and Debtor in this Chapter 13 case who resides at 6004 Axe Handle Road, Quakertown, PA 18951.

5. Defendant is First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank NA as Trustee, Successor in in interest to Bank of America NA, as Trustee, Successor by Merger to LaSalle Bank NA, as Trustee, with its place of business located at 60 Livingston Avenue, St. Paul, MN 55107 (hereinafter referred to as “First Franklin Mortgage Loan Trust”).

BACKGROUND

6. Plaintiff/Debtor commenced this Chapter 13 bankruptcy case by filing a Voluntary Petition on February 10, 2022.

7. At the time of the filing of the Bankruptcy Petition, Plaintiff/Debtor owed an obligation to First Franklin Mortgage Loan Trust in the amount of \$52,229.45 based on a mortgage loan agreement made by First Franklin Financial Corp., an OP.SUB of MLB&T Co., FSB to Nathan J. Weaver on or about March 30, 2007. See Claim No. 2 of First Franklin Mortgage Loan Trust attached hereto as Exhibit “A”.

8. The loan from First Franklin Financial Corp. to Nathan J. Weaver was secured by a mortgage on the Plaintiff/Debtor's residence at 6004 Axe Handle Road, Quakertown, Pennsylvania 18951. Said mortgage was recorded with the Recorder of Deeds of Bucks County on April 7, 2007 in Land Record Book 5357, page 1645.

9. Upon information and belief, the mortgage granted to First Franklin Financial Corp. has been assigned to First Franklin Mortgage Loan Trust. This second position mortgage loan account is currently being serviced by Specialized Loan Servicing LLC.

BASIS FOR CLAIM UNDER 11 U.S.C. §506

10. At the time of the commencement of the bankruptcy case, there existed one other mortgage lien on Debtor's residence at 6004 Axe Handle Road with senior priority to the

mortgage lien of First Franklin Mortgage Loan Trust. That senior mortgage lien is as follows:

- a. U.S. Bank, National Association, Trustee, successor in interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for First Franklin Mortgage Loan Trust 2007-3, Mortgage Pass-Through Certificates, Series 2007-3, holder of a mortgage dated March 30, 2007 recorded in the office of Recorder of Deeds of Bucks County on April 17, 2007 in Land Record Book 5357, page 1624. This first position mortgage loan account is currently being serviced by Nationstar Mortgage, LLC dba Mr. Cooper.

11. The amount of the claim secured by a first position mortgage in favor of U.S. Bank, National Association is in the amount of \$244,723.97 as set forth on the Proof of Claim of U.S. Bank, National Association filed on March 28, 2022, a copy of which is attached hereto as Exhibit "B".

12. The value of the Debtor's residence at 6004 Axe Handle Road, Quakertown, PA 18951 is \$100,000.00 as set forth in the appraisal of James Webb, a Pennsylvania Certified Residential Appraiser of Doylestown, PA. A copy of said appraisal is attached hereto as Exhibit "C".

13. There is no equity in the Debtor's residence to which the second position mortgage lien of First Franklin Mortgage Loan Trust attaches as the value of the residence is less than the balance on the first position mortgage lien.

14. Pursuant to the provisions of 11 U.S.C. §506(a)(1), the claim of First Franklin Mortgage Loan Trust is a wholly unsecured claim as there is no value of First Franklin Mortgage Loan Trust's interest in the real property.

15. Pursuant to 11 U.S.C. §506, the mortgage lien of First Franklin Mortgage Loan Trust is void.

WHEREFORE, Plaintiff/Debtor requests that this Court enter an Order providing for the following relief:

- (1) That the claim of First Franklin Mortgage Loan Trust (Claim No. 2) be declared an allowed unsecured claim in its entirety and no portion of that claim be an allowed secured claim;

- (2) That the mortgage lien of First Franklin Mortgage Loan Trust on the Plaintiff/Debtor's residence at 6004 Axe Handle Road, Quakertown, Pennsylvania 18951 by virtue of the mortgage in the principal amount of \$40,500.00 granted by Nathan J. Weaver to First Franklin Financial Corp, an Op.Sub. of MLB&T Co., FSB dated March 30, 2007 and

recorded in the Office of the Recorder of Deeds of Bucks County on April 17, 2007 in Land Record Book 5357, Page 1645 be declared void, and

(3) upon issuance of a Discharge Order in this case to Debtor Nathan J. Weaver, said mortgage shall be marked as satisfied by the Defendant First Franklin Mortgage Loan Trust or any successor in interest.

/s/Jeffrey C. McCullough
Jeffrey C. McCullough, Esquire
Attorney for Plaintiffs/Debtor
16 North Franklin Street, Suite 300
Doylestown, PA 18901
215-348-8133
215-348-0428 – FAX
jeffmccullough@bondmccullough.com